

# Agenda

## Item #6



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: July 14, 2008

Re: Proposed Changes to Policy on Paying Campaign Funds to Family Members

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At the June 27, 2008 meeting, you considered a draft policy statement on the Ethics Commission's procedures regarding candidates' payments of campaign funds to family members. You adopted the draft policy with changes proposed by Commission member Francis Marsano.

During the course of the meeting, the Commission received some comments from Dan Billings and Alison Smith of the Maine Citizens for Clean Elections (MCCE) suggesting that the language in the final paragraph of the draft policy regarding reimbursements could be improved. At the conclusion of your discussion, you did not direct the staff to make any changes to the reimbursements language.

During the following week, the MCCE contacted the Commission staff and suggested that the distribution of the policy to candidates be delayed. Instead, after consulting with the Commission Chair, the staff included the policy adopted by you on June 27 as a separate insert in a newsletter dated July 3, 2008 that was mailed to all candidates. The July 3 newsletter (front page attached) contained a notation that the Commission's guidance on reimbursements may be updated later this summer.

The Commission staff has drafted some proposed changes to the adopted policy to address the concerns raised by Dan Billings and the MCCE. The proposed changes are marked with shading. Dan Billings has informed the staff that the changes met his concerns, and the MCCE has expressed partial agreement with them.



**Proposed changes are shaded.**

## **POLICY ON PAYING CAMPAIGN FUNDS TO FAMILY MEMBERS**

This memorandum describes the policies and procedures regarding the use of campaign funds to pay a member of the candidate's family or household, which were established by the Maine Ethics Commission pursuant to statutory changes enacted during the First Special Session of the 123<sup>rd</sup> Legislature (P.L. 2007, c. 567 (eff. July 18, 2008) and c. 571 (eff. April 7, 2008)).

### **DISCLOSING A PAYMENT TO A MEMBER OF THE CANDIDATE'S FAMILY OR HOUSEHOLD (applies to gubernatorial, legislative, and county candidates)**

- *Traditionally financed candidates.* If a candidate **uses campaign funds to pay or reimburse** a member of the candidate's household, the candidate must report the family or other relationship (e.g., "brother" or "roommate") in the remarks section of Schedule B (for expenditures) of the campaign finance report. (P.L. 2007, c. 567 (eff. July 18, 2008))
- *Maine Clean Election Act candidates.* If a candidate **uses Maine Clean Election Act funds to pay or reimburse** a member of the candidate's "immediate family" (defined below), a member of the candidate's household, or a business or nonprofit entity affiliated with a member of the candidate's immediate family, the candidate must disclose the family or household relationship (e.g., "spouse," "domestic partner," "brother," "roommate," or "business owned by daughter") in the remarks section of Schedule B of the campaign finance report. (P.L. 2007, c. 571 (eff. April 7, 2008))

For purposes of this disclosure requirement, "immediate family" means the candidate's spouse, parent, grandparent, child, grandchild, sister, brother, stepparent, stepgrandparent, stepchild, stepgrandchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, guardian, former guardian, or domestic partner. 21-A M.R.S.A. §§ 1(20) & 1122(4-A))

### **NEW RESTRICTIONS FOR MAINE CLEAN ELECTION ACT CANDIDATES (21-A M.R.S.A. § 1125(6-B), enacted by P.L. 2007, c. 567 (eff. July 18, 2008))**

**In 2008, the Legislature enacted a broad prohibition against the use of Maine Clean Election Act (MCEA) funds to pay:**

- the candidate,
- a member of the candidate's household, or
- a business, corporation or nonprofit entity in which the candidate or a member of the candidate's household holds a significant proprietary or financial interest.

(over)

The Legislature also provided two narrow exceptions to this prohibition:

### ***I. Permitted Payments to the Candidate and Household Members***

A candidate may only use MCEA funds to pay the candidate, a member of the candidate's household, or a business, corporation or nonprofit entity in which the candidate or a member of the candidate's household holds a significant proprietary or financial interest if the candidate submits evidence to the Commission that the expenditure will be made:

- for a legitimate campaign-related purpose,
- to an individual or business that provides the goods or services being purchased in the normal course of their occupation or business, and
- in an amount that is reasonable taking into consideration current market value and other factors the Commission may choose to consider.

### ***Timing of Submitting Evidence; Procedure for Commission Action***

If a candidate intends to pay MCEA funds to an individual or entity covered by 21-A M.R.S.A. § 1125(6-B), the candidate must submit the evidence required by the statute to the Commission for its approval before entering into an obligation to the payee. The Commission staff shall consider this evidence to determine whether the expenditure, in its view, meets the requirements of 21-A M.R.S.A. § 1125(6-B) and submit its views to the candidate and the Commission. The staff may request additional relevant evidence and, after considering it, the staff shall notify the candidate and the Commission of any proposed expenditure which, in its view, does or does not meet the requirements of 21-A M.R.S.A. § 1125(6-B).

The Commission must hold a hearing on the matter at the next regularly scheduled meeting of the Commission to determine if the proposed expenditure meets the requirements of the statute.

### ***Evidence Submitted***

The candidate should provide information that establishes that the proposed payee currently is employed by or is engaged in a business that provides the goods or services. The candidate should state the proposed price for the goods and services, and include a justification for that amount. In most cases, the justification will include information from the proposed payee regarding the usual price for providing such goods and services to other clients. The candidate should also explain how the goods or services are campaign-related.

## ***II. Reimbursements***

Reimbursements, including travel reimbursements, that are made in accordance with the Commission's rules and guidelines are exempt from this restriction and from the pre-approval process. However, the candidate must disclose the family or household relationship when reporting the reimbursement as described above.

If a MCEA candidate or a family or household member uses personal funds or a personal credit card to pay a vendor for campaign goods or services, the candidate must reimburse the individual with MCEA funds. (There are limited circumstances when reimbursement is not required. Please refer to the *2008 Candidate Guide* for more information.)

## 2008 POST-PRIMARY ELECTION REMINDER FOR MCEA CANDIDATES

### MILEAGE REIMBURSEMENTS AND GAS PURCHASES

If you are using MCEA funds to purchase gasoline or you are reimbursing yourself, campaign workers or volunteers for mileage, remember that a travel log is required.

Please see page 3.

### IF YOU LOST THE PRIMARY ELECTION, PLEASE...

- Return all unspent authorized MCEA funds when your 42-Day Post-Primary report is filed and no later than July 22, 2008.
- If you were authorized to spend matching funds, all unauthorized matching funds were required to be returned no later than June 24, 2008.
- Make checks payable to "MCE Fund".
- Pay all unpaid bills and make all reimbursements before filing the 42-Day Post-Primary Report.
- Keep all campaign records - receipts, invoices, bank statements, cancelled checks, etc for 2 years (July 2010).
- Read Chapter 14 (pages 85-87) of the **2008 Candidate Guide** for a complete description of your responsibilities.

## UPCOMING REPORTING DEADLINE 42-DAY POST PRIMARY REPORT

*Your 42-Day Post-Primary Report is due by Tuesday, July 22, 2008 by 11:59 p.m.* Your 42-day post-primary reporting period began May 28, 2008 and ends on July 15, 2008.

If you filed any 24-Hour Reports in the 13 days prior to the primary election (May 28 through June 9), you need to include those expenditures in the 42-Day Post-Primary Report. If you lost the primary election, this report is the last report of your campaign.

For candidates filing on paper, the Commission's fax machine operates 24 hours a day. However, staff will be available only until 5:00 p.m. on July 22, 2008 to confirm receipt of a faxed report and to offer assistance to candidates and campaign staff.

## NEW APPROVAL PROCESS: PAYMENTS OF MCEA FUNDS TO HOUSEHOLD MEMBERS

In the 2008 session, the Maine Legislature changed the law regarding candidates who pay campaign funds to members of the candidate's family or household. On June 27, 2008, the Commission adopted the enclosed policy. If you are thinking about making a payment to a family or household member, please take a few minutes to read it.

**Restrictions on MCEA Candidates.** Beginning on July 18, 2008, a candidate may not use MCEA funds to pay the candidate, a member of the candidate's household (including roommates), or an affiliated business or non-profit organization for campaign goods or services, except for narrow situations in which the household member provides those goods or services in the normal course of their occupation or business. Candidates wishing to pay household members in these narrow situations must seek the pre-approval of the Commission as described in the enclosed policy.

**Reimbursements.** Later this summer, the Commission may update the enclosed policy as it relates to reimbursements made by a campaign to the candidate and other individuals. In the meantime, the staff advises that reimbursements are not subject to the restriction and the pre-approval process discussed in the policy.

Campaigns must generally reimburse MCEA candidates or their supporters when they use their personal funds or credit card to purchase goods or services for the campaign. Also, campaigns must generally reimburse volunteers who incur out-of-pocket expenses in the course of volunteering, although the Election Law contains some limited exceptions such as travel expenses. Reimbursements should be made promptly and reported in accordance with the Commission's rules.

Please telephone the Commission staff if you have any questions.

approved 6/27/08



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

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## **Policy on Paying Campaign Funds to Family Members**

This memorandum describes the policies and procedures regarding the use of campaign funds to pay a member of the candidate's family or household, which were established by the Maine Ethics Commission pursuant to statutory changes enacted during the First Special Session of the 123<sup>rd</sup> Legislature (P.L. 2007, c. 567 (eff. July 18, 2008) and c. 571 (eff. April 7, 2008)).

### **Disclosing a Payment to a Member of the Candidate's Family or Household (applies to gubernatorial, legislative, and county candidates)**

- *Traditionally financed candidates.* If a candidate makes a payment of campaign funds to a member of the candidate's household, the candidate must report the family or other relationship (e.g., "brother" or "roommate") in the remarks section of Schedule B (for expenditures) of the campaign finance report. (P.L. 2007, c. 567 (eff. July 18, 2008))
- *Maine Clean Election Act candidates.* If a candidate makes a payment of Maine Clean Election Act funds to a member of the candidate's "immediate family" (defined below), a member of the candidate's household, or a business or nonprofit entity affiliated with a member of the candidate's immediate family, the candidate must disclose the family or household relationship (e.g., "spouse," "domestic partner," "brother," "roommate," or "business owned by daughter") in the remarks section of Schedule B of the campaign finance report. (P.L. 2007, c. 571 (eff. April 7, 2008))

For purposes of this disclosure requirement, "immediate family" means the candidate's spouse, parent, grandparent, child, grandchild, sister, brother, stepparent, stepgrandparent, stepchild, stepgrandchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, guardian, former guardian, or domestic partner. 21-A M.R.S.A. §§ 1(20) & 1122(4-A))

### **New Restrictions for Maine Clean Election Act Candidates (21-A M.R.S.A. § 1125(6-B), enacted by P.L. 2007, c. 567 (eff. July 18, 2008))**

This new statute provides that Maine Clean Election Act (MCEA) candidates may not use public campaign funds to pay:

- the candidate,
- a member of the candidate's household,
- or a business, corporation or nonprofit entity in which the candidate or a member of the candidate's household holds a significant proprietary or financial interest

**unless** the candidate submits evidence to the Commission that the expenditure will be made:

- for a legitimate campaign-related purpose,
- to an individual or business that provides the goods or services being purchased in the normal course of their occupation or business, and
- in an amount that is reasonable taking into consideration current market value and other factors the Commission may choose to consider.

### ***Timing of Submitting Evidence; Procedure for Commission Action***

If a candidate intends to pay MCEA funds to an individual or entity covered by 21-A M.R.S.A. § 1125(6-B), the candidate must submit the evidence required by the statute to the Commission for its approval before entering into an obligation to the payee. The Commission staff shall consider this evidence to determine whether the expenditure, in its view, meets the requirements of 21-A M.R.S.A. § 1125(6-B) and submit its views to the candidate and the Commission. The staff may request additional relevant evidence and, after considering it, the staff shall notify the candidate and the Commission of any proposed expenditure which, in its view, does or does not meet the requirements of 21-A M.R.S.A. § 1125(6-B).

The Commission must hold a hearing on the matter at the next regularly scheduled meeting of the Commission to determine if the proposed expenditure meets the requirements of the statute.

### ***Evidence Submitted***

The candidate should provide information that establishes that the proposed payee currently is employed by or is engaged in a business that provides the goods or services. The candidate should state the proposed price for the goods and services, and include a justification for that amount. In most cases, the justification will include information from the proposed payee regarding the usual price for providing such goods and services to other clients. The candidate should also explain how the goods or services are campaign-related.

### ***Reimbursing for Goods or Services Advanced to the Campaign***

If a MCEA candidate or a supporter of that candidate uses personal funds or a personal credit card to pay a vendor for campaign goods or services, the candidate may reimburse the candidate or supporter, provided that the reimbursement occurs in the same campaign finance reporting period as the payment to the vendor. This reimbursement is permitted even if the supporter resides in the same household as the candidate.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Ensure Integrity in Financing Publicly Funded Campaigns**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 21-A MRSA §1017, sub-§5,** as amended by PL 2007, c. 443, Pt. A, §16, is further amended to read:

**5. Content.** A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. The report must contain the itemized expenditures made or authorized during the report filing period, the date and purpose of each expenditure and the name of each payee and creditor. If the payee is a member of the candidate's household, the candidate must disclose the family relationship in a manner prescribed by the commission. The report must contain a statement of any loan to a candidate by a financial institution in connection with that candidate's candidacy that is made during the period covered by the report, whether or not the loan is defined as a contribution under section 1012, subsection 2, paragraph A. The candidate and the treasurer are jointly and severally responsible for the timely and accurate filing of each required report.

**Sec. 2. 21-A MRSA §1125, sub-§6-B** is enacted to read:

**6-B. Expenditures as payment to household members.** A candidate may not make expenditures using fund revenues to pay the candidate, a member of the candidate's household or a business, corporation or nonprofit entity in which the candidate or a member of the candidate's household holds a significant proprietary or financial interest, unless the candidate submits evidence according to procedures established by the commission that the expenditure will be made:

- A. For a legitimate campaign-related purpose;
- B. To an individual or business that provides the goods or services being purchased in the normal course of their occupation or business; and
- C. In an amount that is reasonable taking into consideration current market value and other factors the commission may choose to consider.

This subsection does not prohibit reimbursement to a member of a candidate's household when made in accordance with this chapter and rules adopted by the commission.

Effective 90 days following adjournment of the 123rd Legislature, Second Regular Session, unless otherwise indicated.



**3. Qualifying contributions.** Participating candidates must obtain qualifying contributions during the qualifying period as follows:

- A. For a gubernatorial candidate, at least 3,250 verified registered voters of this State must support the candidacy by providing a qualifying contribution to that candidate;
- B. For a candidate for the State Senate, at least 150 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate; or
- C. For a candidate for the State House of Representatives, at least 50 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate.

A payment, gift or anything of value may not be given in exchange for a qualifying contribution. A candidate may pay the fee for a money order that is a qualifying contribution in the amount of \$5 as long as the donor making the qualifying contribution pays the \$5 amount reflected on the money order. Any money order fees paid by a participating candidate must be paid for with seed money and reported in accordance with commission rules. A money order must be signed by the contributor to be a valid qualifying contribution. The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, a procedure for a qualifying contribution to be made by a credit or debit transaction and by electronic funds transfer over the Internet. Records containing information provided by individuals who have made qualifying contributions over the Internet are confidential, except for the name of the individual making the contribution, the date of the contribution, the individual's residential address and the name and office sought of the candidate in whose support the contribution was made.

It is a violation of this chapter for a participating candidate or an agent of the participating candidate to misrepresent the purpose of soliciting qualifying contributions and obtaining the contributor's signed acknowledgement.

**Sec. 12. 21-A MRSA §1125, sub-§12,** as enacted by IB 1995, c. 1, §17, is amended to read:

**12. Reporting; unspent revenue.** Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission. If a certified candidate pays fund revenues to a member of the candidate's immediate family or a business or nonprofit entity affiliated with a member of the candidate's immediate family, the candidate must disclose the family relationship in a manner prescribed by the commission. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.